

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Administration of the
 North American Numbering Plan
 Carrier Identification Codes (CICs)

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CC Docket No. 92-237

Petition for Limited Waiver

Hardy Telecommunications, Inc. ("Hardy") by counsel and pursuant to Section 1.3 of the Rules of the Federal Communications Commission ("Commission"),¹ hereby requests a limited waiver of the January 1, 1998 deadline for the transition to four digit Feature Group D Carrier Identification Codes ("CICs") and any attendant customer education requirements established in the above-captioned proceeding.² Hardy is an incumbent Local Exchange Carrier ("LEC") headquartered in Lost River, West Virginia, and serves approximately 2600 access lines in rural areas of West Virginia, predominantly within Hardy County. As demonstrated herein, good cause exists for this waiver³ because it is technically infeasible for Hardy to comply with the January 1, 1998 deadline for conversion to the four digit CIC capability. Accordingly,

¹ 47 C.F.R. § 1.3.

² See In the Matter of Administration of the North American Numbering Plan Carrier Identification Codes (CICs), Petition for Rulemaking of VarTec Telecom, Inc., Second Report and Order, CC Docket No. 92-237, FCC 97-125, released April 11, 1997, pet. recon. pending ("Second Report and Order").

³ "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Hardy requests a brief extension of time, until April 30, 1998, to implement four digit CIC capability. This limited waiver will enable Hardy to continue its on-going efforts to select, purchase, and deploy a switch capable of providing the four digit CIC function. In support thereof, Hardy shows the following:

In early 1997, Hardy began the process required by the Rural Utilities Service to select, purchase, and deploy a new switch capable of providing additional services, including the four digit CIC function.⁴ This process resulted, in part, from Hardy's notification by its switch manufacturer, Alcatel, that the software upgrades required by Hardy to meet four digit CIC requirements would not be provided. Although Hardy was aware of the need to migrate to four digit CIC capability, it anticipated being in compliance with the originally proposed six year transition required for conversion to four digit CICs, i.e., by the year 2000.⁵ However, upon issuance of the Second Report and Order, Hardy recognized the difficulty in complying with the January 1, 1998, deadline,⁶ and, having explored all reasonable methods, now believes it to be impossible to meet the deadline.

In its April 11, 1997, Second Report and Order, the Commission found that the transition from the concurrent use of three digit CICs and four digit CICs "should end as soon as practicable, and that shortening the originally proposed six-year transition to a two-year and nine month transition will serve the overall pro-competitive purposes of the [Telecommunications Act

⁴ See Attached hereto is the declaration of Dwight Welch, General Manager of Hardy.

⁵ Second Report and Order at para. 4.

⁶ By Order, issued July 18, 1997, the Common Carrier Bureau denied a request for stay of the Second Report and Order. See In the Matter of Administration of the North American Numbering Plan Carrier Identification Codes (CICs), Order, CC Docket No. 92-237, FCC 97-1524, released July 18, 1997.

of 1996]. . . ."⁷ The Commission concluded that the shorter transition gave "carriers and equipment owners a reasonable period to complete upgrading their equipment and educating customers about the change from three digit Feature Group D CICs to four digit Feature Group D CICs."⁸ While the Commission previously indicated that it was "not persuaded that . . . small, rural carriers need a transition beyond January 1, 1998,"⁹ the Second Report and Order makes clear that this decision was based on information from Lucent Technologies and Northern Telecom regarding the availability of the four digit CIC functionality.¹⁰

Hardy, however, currently operates an Alcatel E-10-Five switch. Because the record upon which the Commission concluded that the January 1, 1998, deadline was reasonable does not address the specific circumstances confronting Hardy, the limited waiver of the January 1, 1998 deadline is appropriate. Moreover, Hardy respectfully submits that the public interest would be served by a grant of this limited waiver.

Hardy's planning activities and decisions regarding facilities upgrades predate the Commission's April 11, 1997 decision establishing the January 1, 1998, deadline. Enabling Hardy to continue its current course will enable it to purchase and deploy its new switch in the most economical fashion, which, in turn, will benefit its subscribers. It would be unduly burdensome, if not impossible, for Hardy to alter the process it began in early 1997 regarding its new switch. Moreover, it would be inequitable if Hardy's customers are required to bear the

⁷ Second Report and Order at para. 4.

⁸ Id. at para. 27.

⁹ Id. at para. 36.

¹⁰ Id. at para. 39.

additional burden of uneconomic costs resulting from requiring an abrupt change in Hardy's plans. Any brief delay in the provision of four digit CIC capability within the Hardy service area, therefore, is clearly of minor impact when compared to the costs associated with Hardy's changing its plans midstream.

Hardy anticipates that the only interexchange carriers ("IXCs") to be affected by a grant of this limited waiver are those that have been issued new four digit CICs. As is the situation today, these carriers will not be able to receive carrier access code calls originated from a Hardy customer. However, IXCs with three digit CICs will continue to have carrier access code calling on and after January 1, 1998. Bell Atlantic, Hardy's tandem switch operator, has the capability to translate the three digit CIC for carrier access code calls originated from Hardy as they are today.

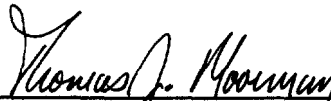
In light of these specific facts and circumstances, Hardy submits that good cause exists for this limited waiver of the January 1, 1998, deadline until April 30, 1998, for conversion to four digit CIC capability, and any attendant customer education requirement. While Hardy will make every reasonable effort to expedite the date of completion of conversion to four digit CICs, it anticipates that the extension to April 30, 1998, will enable it to ensure the deployment of the new switch in a reasonably efficient manner.

Respectfully submitted,

Hardy Telecommunications, Inc.

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September 23, 1997

By:


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DECLARATION OF DWIGHT WELCH

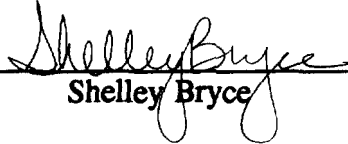
I, Dwight Welch, General Manager of Hardy Telecommunications, Inc., do hereby declare under penalties of perjury that I have read the foregoing "Petition for Limited Waiver" and the information contained therein is true and accurate to the best of my knowledge, information, and belief.


Dwight Welch
General Manager

Date: September 9, 1997

CERTIFICATE OF SERVICE

I, Shelley Bryce, of Kraskin & Lesse, LLP, 2120 L Street, NW, Suite 520, Washington, DC, 20037, hereby certify that on this 23rd day of September, 1997, a copy of the attached "Petition for Limited Waiver" was hand delivered to the parties listed below:


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